



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 5557775

Date: DEC. 20, 2019

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, a hematopathology clinician and researcher, seeks second preference immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner qualified for classification as a member of the professions holding an advanced degree, but that he had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

On appeal, the Petitioner submits additional documentation and a brief asserting that he is eligible for a national interest waiver.

In these proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

- (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien’s services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term “national interest,” we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).¹ *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion², grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national’s proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor’s merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual’s education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national’s qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming

¹ In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm’r 1998) (*NYSDOT*).

² See also *Poursina v. USCIS*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 2019) (finding USCIS’ decision to grant or deny a national interest waiver to be discretionary in nature).

that other qualified U.S. workers are available, the United States would still benefit from the foreign national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.³

II. ANALYSIS

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree. The remaining issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

At the time of filing, the Petitioner stated that he “has been working as a Fellow Physician in the Hematopathology Fellowship Program at the [REDACTED] [REDACTED] and is expected to complete this training in June 2018.” In response to the Director's request for evidence, the Petitioner provided an April 2018 letter from [REDACTED] offering him an appointment in the Department of Pathology as an “Instructor of Pathology and as a Clinical Fellow in Hematopathology” set to begin in July 2018.⁴ On appeal, the Petitioner presents his itinerary for an upcoming job interview with [REDACTED] and information about that institution.⁵

A. Substantial Merit and National Importance of the Proposed Endeavor

The Petitioner indicated that his “proposed endeavor is to work in the United States as a hematopathologist” and that this undertaking involves “the study of diseases of the cells that make up our blood.” He stated that in addition to diagnosing blood diseases that afflict his patients, his proposed work includes “research to advance the field and improve upon the medical understanding and diagnosis of diseases and disorders of the blood.”

The record includes information about the valuable medical work performed by pathologists and hematopathologists. The Petitioner also submitted website screenshots from the Leukemia and Lymphoma Society (LLS) discussing general blood cancers. For example, the documentation from LLS indicates that an estimated 174,250 people in the United States are expected to be diagnosed with some form of blood cancer in 2018. The record therefore supports the Director's determination that the Petitioner's proposed endeavor has substantial merit.

³ See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

⁴ This letter states: “In conjunction with your academic appointment in Pathology, you will conduct your second year of fellowship training in Hematopathology, which requires a combination of patient care, research, and teaching responsibilities”

⁵ As the Petitioner is applying for a waiver of the job offer requirement, it is not necessary for him to have a job offer from a specific employer. However, we will consider information about his current and prospective positions to illustrate the capacity in which he intends to work in order to determine whether his proposed endeavor meets the requirements of the *Dhanasar* analytical framework.

To satisfy the national importance requirement, the Petitioner must demonstrate the “potential prospective impact” of his work. In addition to the aforementioned information from LLS, the Petitioner offered a letter of support from [redacted] an assistant professor of pathology at [redacted], discussing the potential benefits of his proposed research and how it stands to advance his field. The record also includes documentation indicating that the benefit of the Petitioner’s proposed research has broader implications, as the results are disseminated to others in the field through medical journals and conferences. As the Petitioner has documented both the substantial merit and national importance of his proposed hematopathology research, we agree with the Director that he meets the first prong of the *Dhanasar* framework.⁶

B. Well Positioned to Advance the Proposed Endeavor

The second prong shifts the focus from the proposed endeavor to the Petitioner. As previously noted, his clinical work and teaching duties do not meet the first prong of the *Dhanasar* framework. Because the Petitioner’s proposed hematopathology research has broader implications for the field (unlike his work as a clinician and medical instructor), our analysis under this prong will focus on whether he is well positioned to advance his proposed research relating to understanding and diagnosing diseases and disorders of the blood. For the reasons discussed below, the evidence is insufficient to demonstrate that he is well positioned to advance that research under *Dhanasar*’s second prong.

The record includes documentation of the Petitioner’s curriculum vitae, academic credentials, medical certifications and license, professional memberships, published articles, and conference presentations. He also offered evidence of articles that cited to his published work, and a letter from [redacted] discussing the Petitioner’s medical training, clinical work, and research projects. The Director considered this documentation and determined that it was insufficient to meet *Dhanasar*’s second prong. For example, the Director stated that “[a]t the time of filing this petition, the Petitioner had yet to complete the specialized training for which his proposed endeavor was based upon.” In addition, the Director noted that Petitioner had submitted only one recommendation letter in support of the petition and that this letter from [redacted] (his coworker) did not indicate how the Petitioner’s work at [redacted] has affected the field of hematopathology or has otherwise rendered him well positioned to advance his proposed research.

[redacted]’s letter focused mainly on two research projects she worked on with the Petitioner: a study comparing “[redacted]” and a follow-up study of this disease “[redacted].” With respect to the first study, [redacted] stated: “[The Petitioner] helped me gather clinical and histologic data for this project. Compared to [redacted] transplant patient, we found that [redacted] disease occurring in [redacted] transplant patients showed higher [redacted] counts and had earlier onset

⁶ With respect to the Petitioner’s proposed patient care and teaching duties at [redacted] and [redacted], while these endeavors have substantial merit, the record does not establish that his clinical and instructional work would impact the field of hematopathology or the U.S. healthcare industry more broadly, as opposed to being limited to the patients he serves and his medical students. Accordingly, without sufficient documentary evidence of their broader impact, the Petitioner’s clinical work and teaching activities do not meet the “national importance” element of the first prong of the *Dhanasar* framework. Similarly, in *Dhanasar*, we determined that the petitioner’s teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id.* at 893.

following transplantation.” She further indicated that the results from their two research projects were presented at the United States and Canadian Academy of Pathology (USCAP) annual meeting and accepted for publication in *Modern Pathology*, but the Petitioner has not demonstrated that this work has been influential among hematopathology researchers, has served as an impetus for progress or generated positive discourse in the field, or otherwise represents a record of success or progress rendering him well positioned to advance his proposed research.

In addition, the Petitioner’s evidence includes a Google Scholar citation report showing that his article in *American Journal of Dermatopathology*, entitled “[REDACTED]

[REDACTED] has been cited in 19 articles. He does not, however, offer comparative statistics demonstrating the significance of this level of citation within his field. Nor does the record demonstrate that this research relating to [REDACTED] (a form of skin cancer) constitutes a record of success in the Petitioner’s proposed specialty of hematopathology.

The record also contains documentation indicating that the Petitioner is a member of both USCAP and the American Society for Clinical Pathology, and that he completed “Inspection Team Leader Training” with the College of American Pathologists. These memberships and training certification, however, are insufficient to show a record of success in his research or a level of interest in his work from relevant parties signifying that he is well positioned to advance his proposed endeavor aimed at understanding and diagnosing diseases and disorders of the blood.

The record demonstrates that the Petitioner has conducted, published, and presented research during the training phases of his medical career, but he has not shown that this work renders him well positioned to advance his proposed hematopathology research. While we recognize that research must add information to the pool of knowledge in some way in order to be accepted for publication, presentation, funding, or academic credit, not every individual who has performed original research will be found to be well positioned to advance his proposed endeavor. Rather, we examine the factors set forth in *Dhanasar* to determine whether, for instance, the individual’s progress towards achieving the goals of the proposed research, record of success in similar efforts, or generation of interest among relevant parties supports such a finding. *Id.* at 890. The Petitioner, however, has not shown that his published and presented work has served as an impetus for progress in the hematopathology field, that it has affected diagnostic or treatment protocols for blood diseases, or that it has generated substantial positive discourse in the hematopathology research community. Nor does the evidence otherwise demonstrate that his work constitutes a record of success or progress in understanding and diagnosing diseases and disorders of the blood. As the record is insufficient to demonstrate that the Petitioner is well positioned to advance his proposed research endeavor, he has not established that he satisfies the second prong of the *Dhanasar* framework.

C. Balancing Factors to Determine Waiver’s Benefit to the United States

As explained above, the third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. Here, the Petitioner claims that he is eligible for a waiver due to his medical training, knowledge and skills in his specialty, and the urgent need for U.S. physicians who are qualified to diagnose and study blood diseases. The Petitioner also contends that his eligibility is based on the

impracticality of labor certification and a projected shortage of pathologists in the United States.⁷ However, as the Petitioner has not established that he is well positioned to advance his proposed endeavor as required by the second prong of the *Dhanasar* framework, he is not eligible for a national interest waiver and further discussion of the balancing factors under the third prong would serve no meaningful purpose.

III. CONCLUSION

As the Petitioner has not met the requisite second prong of the *Dhanasar* analytical framework, we find that he has not established he is eligible for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.

⁷ We note that the U.S. Department of Labor addresses shortages of qualified workers through the labor certification process. Accordingly, a shortage alone does not demonstrate that waiving the requirement of a labor certification would benefit the United States.